

In the High Court of Punjab and Haryana at Chandigarh

**LPA No.246 of 2015 (O&M)
Date of decision: 12.2.2015**

Smt.Gian Kaur (now deceased) through LRs. Baldev Singh and others

.....Appellants

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Sandeep Jain, Advocate,
for the appellants.

Raj Mohan Singh, J.

1. This Letters Patent appeal is directed against the order dated 8.11.2013, passed by learned Single Judge, whereby appellant's writ petition has been dismissed while upholding the orders dated 20.7.2010 and 30.3.2012, passed by respondent No.2 and 1 respectively.

2. Claim of the predecessor-in-interest of the appellants, namely, Smt.Gian Kaur, was that the property in question was purchased by her on 31.8.1962 from one Jaswant Rai and since then she was continuing as owner in possession. Respondent No.3, Panchayat Samiti, Nawahshahr filed petition under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short 'the Act') for ejectment of Smt. Gian

Kaur on the ground that she was in unauthorized possession of the property belonging to Provincial Government, which was lying under the care and custody of the Panchayat Samiti, Nawanshahr for its preservation and maintenance. The land in question is 6 marlas comprised in khasra No. 1897 (7-11) and 1898 (6-1) out of total measuring 13 kanals 12 marlas (*Gair Moursi Hospital Pashuan (cattle) Veterinary Hospital*) according to jamabandi for the year 2003-2004. The property in question was claimed to be in possession of Panchayat Samiti, Nawanshahr since the year 1962 as per the orders of its owner i.e. the Provincial Government (Punjab) vide letter/ notification No.130 11/ B.A (PSA) 61/167561, 167562, 167563, 1567563, 167566 dated 13.11.1961. The land in question is thus a 'public premises' under the Act.

3. On the aforesaid land, building of Veterinary Hospital is existing and the same is being used for administration of Veterinary Hospital, Nawanshar since long back. The building of the hospital is owned by the Provincial Government (Punjab). All rights appurtenant thereto for managing and looking after the affairs vest in Panchayat Samiti as its custodian. The predecessor of the appellants illegally occupied the said premises by way of encroachment upon 6 marlas of land out of the total land. Consequently, petition under the Act for ejectment of the unauthorized occupant was filed.

4. On the application filed by Panchayat Samiti, Nawanshahr, demarcation was conducted by the official (s) of revenue department on 18.6.1997, wherein factum of unauthorized occupation over 6 marlas of land was duly confirmed and the

unauthorized possession was found to be of 4-5 months prior to the date of demarcation and report dated 18.6.1997. On the basis of said demarcation report, lawful notices were issued to the Predecessor-in- interest of the appellants for vacation of unauthorized possession. In spite of due service, needful was not done and, thereafter, respondent No.2 proceeded with the case. After due process of recording evidence, respondent No.2 discussed the evidence on record in its right perspective. Attorney of Smt.Gian Kaur, namely, Ajit Singh, admitted during course of proceedings that the land covered by Veterinary Hospital is owned by Provincial Government and Panchayat Samiti is its custodian. The only emphasis was that, the demarcation report dated 18.6.1997 was wrong as Smt.Gian Kaur was never associated in the process of demarcation.

5. The predecessor of respondent No.2, vide order dated 21.8.2007, ordered for fresh demarcation by the Field Kanungos of Nawanshahr and Bharta Kalan jointly to find out whether or not Smt.Gian Kaur had encroached upon any area belonging to Provincial Government. Accordingly, re-demarcation was done by both the Field Kanungos on 5.11.2007 and they submitted fresh demarcation report, endorsing the demarcation done on 18.6.1997. The factum of Smt.Gian Kaur being in unauthorized possession was reiterated.

6. Smt.Gian Kaur again filed objection against the demarcation report dated 5.11.2007 on the ground that it was not done in accordance with prescribed rules and orders of this Court and was

also against standing instructions issued by Financial Commissioner, Punjab. She pleaded that the Field Kanungos did not fix three *pucca* points before making such measurements. The claim of Smt.Gian Kaur was rejected by respondent No.2 endorsing that the measurements were taken out by the field staff in the presence of counsel for Smt.Gian Kaur, who did not raise any objection during the process of taking measurements.

7. Respondent No.2, vide order dated 28.8.2008, concluded that the land measuring 6 marlas is in illegal possession of Smt.Gian Kaur and the land in question belongs to the Provincial Government. The claim of the unauthorized occupant, having become owner with efflux of time, was also negated. Resultantly, order of eviction was passed. Aggrieved by that order, Smt.Gian Kaur filed appeal before the Deputy Commissioner, Shaheed Bhagat Singh Nagar, exercising the powers of Commissioner. The appellate authority, vide order dated 26.3.2009, remanded the case to respondent No.2 by allowing Smt.Gian Kaur to cross examine the Local Commissioner/ office kanungos, who were appointed for carrying out demarcation. On remand, both the Local Commissioners, namely, Harbans Lal, Kanungo, Nawanshahr and Malkiat Ram, Kanungo Circle Bharta Kalan were summoned and both were subjected to lengthy cross-examination by counsel for Gian Kaur. The lengthy cross-examination could yield no favour for Gian Kaur. Both the Kanungos stood the test of cross-examination and their testimonies remained un-shattered through out. It was brought out on record that the Field Kanungos had traced out *pucca* points before carrying out

measurements of khasra numbers 1897 and 1898. It was also found that learned counsel for Smt.Gian Kaur, namely, Sh.S.L.Jain was also present and due procedure was adopted in terms of rules, regulations and instructions of the Financial Commissioner. 6 marlas of land was accordingly found in illegal and unauthorized possession of Smt.Gian Kaur. Respondent No.2, after due consideration of facts and circumstances, passed the order dated 20.7.2010 (Annexure P-2) ordering ejectment of Smt.Gian Kaur from the land in question.

8. The said order was again assailed by Smt.Gian Kaur before the Deputy Commissioner, Shaheed Bhagat Singh Nagar, exercising the powers of Commissioner. The appellate authority on due appreciation of material on record, confirmed the order dated 20.7.2010 passed by respondent No.2 vide its order dated 30.3.2012 (Annexure P-6).

9. Both the orders were further assailed in the writ petition and the learned Single Judge has also found that the possession of Smt.Gian Kaur over 6 marls of land is unauthorized and consequently dismissed the writ petition vide order dated 8.11.2013.

10. Learned counsel for the appellants has again reiterated the stand taken before the authorities and learned Single Judge.

11. Learned Single Judge, as a matter of fact, found that in the first demarcation report dated 18.6.1997, possession of Smt.Gian Kaur over 6 marlas of land was found to be unauthorized. At that time, the grievance of the predecessor-in-interest of appellants was

that she was not associated in any demarcation proceedings. Resultantly, after its remand, second demarcation was conducted by two Field Kanungos, who found *pucca* point for that purpose and demarcated the property in question after following due procedure, order and instructions issued by the competent authority. The predecessor-in-interest of the appellants was still not satisfied with the demarcation report dated 5.11.2007. The authorities as well as learned Single Judge have also found that at the time of carrying out demarcation, counsel for Smt. Gian Kaur remained present throughout and he did not make any objection whatsoever against the process of demarcation. Again it was claimed that the Kanungos were not allowed to cross-examine by the predecessor-in-interest of the appellants. Accordingly, both the Kanungos were made available for cross-examination. Lengthy cross-examination was conducted and nothing incriminating could come out from their depositions. Resultantly, the demarcation, which was conducted firstly on 8.6.1997 was affirmed. The genuineness of the demarcation report thus stands proved beyond any pale of doubt.

12. We thus do not find any worth in the submissions made by learned counsel for the appellants. Resultantly, the appeal, being totally devoid of merits, is dismissed.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

February 12, 2015
anita